

No. 14-1424 RV

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

## Findings of Fact

1. In 2012, Wiley paid fees to renew her license plates for a 1996 Pontiac through April 30, 2014.
2. The aforementioned vehicle was sold on October 4, 2013.
3. On November 23, 2013, Wiley requested a refund from the Department of Revenue.
4. The Director issued a final decision denying Wiley's request for a refund on August 6, 2014.

## Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.<sup>1</sup> Wiley has the burden to prove that she is entitled to a refund.<sup>2</sup> Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision.<sup>3</sup>

Wiley argues that a refund is appropriate because she did not use the license plates/tabs for the remaining period of time between the sale of the 1996 Pontiac, on October 4, 2013, and the expiration of the last renewal. She also argues a refund is appropriate because she did not drive for some portion of the renewal period. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.<sup>4</sup> "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit."<sup>5</sup>

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<sup>1</sup>Section 621.050, RSMo 2000. Statutory references are to RSMo Supp. 2013, unless otherwise noted.

<sup>2</sup>*Id.*

<sup>3</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>4</sup>*Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990).

<sup>5</sup>*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm'n*, 517 S.W.2d 133, 137 (Mo. 1974).

Missouri statutes provide for refunds or credits against unused license plates and tabs only in limited circumstances. Section 301.121, for example, provides for a refund of certain amounts paid when a license plate is surrendered, but only for commercial vehicles registered in excess of 54,000 pounds. By contrast, § 301.140.8, which applies to other motor vehicles, provides:

Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, **the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle.** Such credit shall be granted based upon the date the license plates are surrendered. **No refunds shall be made on the unused portion of any license plates surrendered for such credit.**

(Emphasis added.) Section 301.140.3 provides:

License plates may be transferred from a motor vehicle which will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. The owner shall pay a transfer fee of two dollars if the newly purchased vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that of the vehicle which will no longer be operated. When the newly purchased motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, the applicant shall pay a transfer fee of two dollars and a pro rata portion of the difference in fees. When the newly purchased vehicle is of less horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, **the applicant shall not be entitled to a refund.**

Section 301.140.8 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, this subsection does not apply to Wiley's circumstances. This subsection expressly disallows a refund. The applicant is also not permitted a refund under

§ 301.140.3, which provides for a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles.

Unfortunately, we do not find any provision of law authorizing a refund to Wiley under the circumstances she has described in her complaint. We may only do what the law allows us to do, and neither the Director nor this Commission may change the law.<sup>6</sup> Therefore, we must deny Wiley's request for a refund.

### **Summary**

Kay Wiley is not entitled to a refund of the fees paid for renewal of the license plates and tabs for the 1996 Pontiac.

SO ORDERED on November 12, 2014.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>6</sup>*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).